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Imperial Toy LLC

10  
11  
12 UNITED STATES BANKRUPTCY COURT  
13 NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION  
14

15 In re  
16 Imperial Toy LLC, a California limited  
liability company,  
17 Debtor.  
18  
19  
20  
21  
22  
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24

Case No. 19-52335

Chapter 11

**FIRST DAY EMERGENCY  
MOTION TO APPROVE (I) BID  
PROCEDURES IN CONNECTION  
WITH SALE OF DEBTOR'S  
ASSETS; (II) BREAK-UP FEE; AND  
(III) RELATED RELIEF**

Date: Tuesday, November 19, 2019  
Time: 10:00 a.m.  
Judge: Honorable M. Elaine Hammond  
United States Bankruptcy Court  
280 South First Street  
San Jose, CA 95113  
Crtrm.: 11

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**TABLE OF CONTENTS**

	Page
I. INTRODUCTION.....	5
II. BACKGROUND .....	5
A.    The Debtor. ....	5
B.    The APA and Proposed Bid Procedures. ....	6
III. ARGUMENT.....	11
A.    The Bid Procedures Are Adequate and Reasonable Under the Circumstances. ....	11
B.    The Break-Up Fee is Reasonable, Appropriate and Beneficial to the Estate. ....	14
C.    The Break-Up Fee Should be Approved as a Use of the Estate’s Assets Outside the Ordinary Course of Business. ....	16
IV. CONCLUSION .....	17

## TABLE OF AUTHORITIES

Page(s)

### Cases

*In re Abbotts Dairies of Pennsylvania, Inc.*

788 F.2d 143 (3rd Cir. 1986)..... 12

*In re America West Airlines, Inc.*

166 B.R. 908 (Bankr. D. Ariz. 1994) ..... 14, 15

*In re APP Plus, Inc.*

223 B.R. 870 (Bankr. E.D.N.Y. 1998)..... 14

*In re Castre*

312 B.R. 426 (Bankr. D. Colo. 2004)..... 12

*In re Chinichian*

784 F.2d 1440 (9th Cir. 1986) ..... 12

*In re Continental Airlines, Inc.*

780 F.2d 1223 (5th Cir. 1986)..... 12

*In re Crown Corp.*

679 F.2d 774 (9th Cir. 1982)..... 12

*In re Diamond Plus, Inc.*

233 B.R. 829 (Bankr. E.D. Ark. 1999)..... 14

*In re Fifth Ave. Associates, L.P.*

96 B.R. 24 (Bankr. S.D.N.Y. 1989) ..... 14

*In re Geothermal Resources Int'l*

93 F.3d 648 (9th Cir. 1996)..... 13

*In re Integrated Resources, Inc.*

135 B.R. 746 (Bankr. S.D.N.Y. 1992) ..... 14, 15

*In re Lionel Corp.*

722 F.2d 1063 (2nd Cir. 1983)..... 12, 13

*In re O'Brien Env'tl. Energy, Inc.*

181 F.3d 527 (3d Cir. 1999) ..... 14, 15, 16

1	<i>In re Pomona Valley Med. Group, Inc.</i>	
2	476 F.3d 665 (9th Cir. 2007) .....	12
3	<i>In re Psychometric Systems, Inc.</i>	
4	267 B.R. 670 (Bankr. D. Colo. 2007).....	12
5	<i>In re Walter</i>	
6	83 B.R. 14 (9th Cir. 1988).....	12
7	<u>Statutes</u>	
8	Bankruptcy Code § 105(a).....	12
9	Bankruptcy Code § 363 .....	5, 12, 13, 16
10	Bankruptcy Code § 363(b).....	16
11	Bankruptcy Code § 363(b)(1).....	12
12	Bankruptcy Code § 365 .....	5
13	Bankruptcy Code § 503(b).....	15
14	Bankruptcy Code § 1107(a).....	6
15	Bankruptcy Code § 1108 .....	6
16	<u>Other Authorities</u>	
17	Federal Rules of Bankruptcy Procedure 2002.....	5
18	Federal Rules of Bankruptcy Procedure 6004.....	5
19	Federal Rules of Bankruptcy Procedure 6006.....	5
20		
21		
22		
23		
24		
25		
26		
27		
28		

1 **I. INTRODUCTION**

2 Imperial Toy LLC, the debtor and debtor-in-possession in the above-  
3 captioned case (“Imperial Toy” or the “Debtor”) intends to seek Court approval of a  
4 sale (the “Sale”) of substantially all of the Debtor’s assets (the “Assets”) pursuant to  
5 the Asset Purchase Agreement dated November 18, 2019 (the “APA”) with Ja-Ru,  
6 Inc. (“Ja-Ru” or the “Stalking Horse Bidder”). The Debtor is filing a separate  
7 motion for the approval of the Sale (the “Sale Motion”), which attaches the APA as  
8 an Exhibit. In connection with the Sale, the Debtor intends to hold an auction at the  
9 hearing on the Sale Motion in the event that any other person or entity submits a  
10 qualifying overbid for the Assets (the “Sale Hearing”). The Assets are comprised of  
11 the majority of Debtor’s property, including the membership interest in non-debtor  
12 affiliate Imperial Toy de Mexico, S. de R.L.

13 The Debtor submits this motion (the “Motion”) to establish certain bid and  
14 sale procedures, to allow Ja-Ru a “break-up fee” of \$650,000 of the purchase price  
15 in the APA and to approve related relief. This Motion is made pursuant to  
16 Sections 363 and 365 of title 11 of the United States Code (the “Bankruptcy Code”),  
17 and Federal Rules of Bankruptcy Procedure 2002, 6004 and 6006. The Debtor  
18 requests that the Court approve the bidding procedures enumerated below in  
19 connection with the contemplated Sale and auction of the Assets.

20 The Motion is based on the arguments below, as well as the accompanying  
21 Notice of the Motion, the concurrently filed declaration of Peter Tiger In Support of  
22 First Day Motions (“Tiger Declaration”), and all other pleadings, evidence or  
23 arguments submitted at or before final determination of this Motion.

24 **II. BACKGROUND**

25 **A. The Debtor.**

26 Imperial Toy is a California limited liability company that was founded in  
27 1969 by the Kort Family, and has grown over its 50 years in business to be a  
28 worldwide leader in the sale and manufacture of bubbles, novelty toys, and other

1 children's products. Imperial Toy is a manufacturer and wholesaler that distributes  
2 its products to over 75 countries around the world. A more detailed description of  
3 Imperial Toy may be found in the concurrently filed Tiger Declaration.

4 The Debtor commenced this bankruptcy case by filing a voluntary chapter 11  
5 petition on November 18, 2019. The Debtor continues to operate its business as a  
6 debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.  
7 No official committee of unsecured creditors has yet to be appointed.

8 As stated in the Debtor's "first day" filings, the Debtor's strategy in the case  
9 is to conduct a Sale in an expedited manner in order to maximize value and mitigate  
10 damage claims. The Debtor has now entered into an APA with Ja-Ru and desires to  
11 sell the Assets at an auction pursuant to the bid and sale procedures described  
12 below.

13 **B. The APA and Proposed Bid Procedures.**

14 Following extensive marketing of its assets the Debtor determined in early  
15 November that it should focus its efforts on the Stalking Horse Bidder. Following  
16 extensive negotiations the parties entered into a non-binding letter of intent,  
17 followed by the APA.

18 The transaction under the APA (the "Stalking Horse Bid") provides for the  
19 Sale of the Assets for \$13,000,000. Under the APA, the Stalking Horse Bidder will  
20 be entitled to a break-up fee in the amount of \$650,000 (the "Break-Up Fee") in the  
21 event the Sale closes to a third party other than Purchase, which amount shall be  
22 paid only from the proceeds of such other Sale and shall have priority as an  
23 administrative expense under Sections 503(b) and 507(a)(2) of the Bankruptcy  
24 Code. The Break-Up Fee, at 5% of the purchase price under the APA, is a  
25 reasonable amount to compensate the Stalking Horse Bidder for its costs and its  
26 agreement to serve as a stalking horse buyer.

27 The bid procedures that the Debtor proposes to implement are set forth in this  
28 Motion (the "Bid Procedures"). The Debtor has designed the Bid Procedures to

1 facilitate a full and fair process designed to maximize the value of the Assets for the  
2 benefit of the Debtor's estate and so that the sale process will not be delayed by last  
3 minute offers. The timeline below also reflects the deteriorating financial condition  
4 of the Debtor, the high cash burn occurring each week in this bankruptcy case, and  
5 the need to achieve certainty of closing. The Bid Procedures provide for the  
6 following:

7           1.     Break-Up Fee. A break-up fee payable to Stalking Horse Bidder  
8 upon and pursuant to the events set forth in the Sale Procedures Order in an amount  
9 equal to Six Hundred Fifty Thousand Dollars (\$650,000.00).

10           2.     Overbids. A minimum initial overbid increment of Seven  
11 Hundred Fifty Thousand Dollars (\$750,000.00).

12           3.     Bid Increments. Minimum subsequent bid increments of One  
13 Hundred Thousand Dollars (\$100,000.00).

14           4.     Qualified Bids. In order to participate in the Auction at the Sale  
15 Hearing, an interested bidder must be designed by the Debtor, after consultation  
16 with the Consultation Parties, as a "Qualified Bidder." In order to be a Qualified  
17 Bidder, the interested bidder must submit a bidding package (a "Qualified Bid") to  
18 the Debtor that includes the following on or before December 12, 2019 (the "Bid  
19 Deadline"): (i) an executed form of Asset Purchase Agreement without financing,  
20 diligence, or other contingencies, that (a) provides for a sale price in a cash amount  
21 of not less than \$13,750,000, (b) provides for consummation of the proposed sale  
22 transaction by no later than December 18, 2019, and (c) is capable of being executed  
23 by Seller immediately, and (ii) confirmation of financing committed or immediate  
24 funding available that indicates its financial ability to pay the Purchase Price. In  
25 addition, a Qualified Bid must be irrevocable, must waive substantial contribution  
26 claims, and not provide for any break-up fees or expense reimbursement (other than  
27 the stalking horse bid of Ja-Ru, Inc.), must consent to the jurisdiction of the  
28 Bankruptcy Court to resolve all disputes, must identify with particularity which

1 contracts the proposed bidder would assume and provide in detail the bidder's  
2 proposal for cure amounts and adequate assurance of future performance with  
3 respect to such contracts, and must comply with any pre-petition privacy policy of  
4 the Debtor's applicable to the Assets being purchased. The Stalking Horse Bidder  
5 (Ja-Ru, Inc.) – once all contingencies under the APA have been eliminated, and the  
6 Pre-Petition Secured Parties (as defined in the Interim DIP Financing Order) are  
7 automatically deemed to be Qualified Bidders. The Debtor will announce the full  
8 list of Qualified Bidders at the outset of the Auction, if applicable, and the Sale  
9 Hearing.

10           5.     Winning Bid. The winning bid shall be the highest bid (the  
11 “Winning Bid”); provided, however, that if (i) the highest bid made by a qualified  
12 bidder other than Stalking Horse Bidder minus the Break Up Fee is less than (ii) the  
13 highest bid of Stalking Horse Bidder, then the bid of Stalking Horse Bidder shall be  
14 the Winning Bid, so that, no matter how high bidding may go, a successful winning  
15 bid will result in a payment to Stalking Horse Bidder of the Break-Up Fee.

16           6.     Cash Bids. All bids made by Stalking Horse Bidder as part of  
17 the Sale Hearing will be authorized to be comprised of (i) a cash payment and (ii) a  
18 credit bid authorized pursuant to paragraph 11 below.

19           7.     Good Faith Deposit. In order to be deemed a qualified bidder,  
20 each prospective bidder must provide a “good faith deposit” in an amount no less  
21 than One Million Dollars (\$1,000,000.00) to be deposited in escrow in immediately  
22 available funds no later than the Bid Deadline.

23           8.     Payment of Break-Up Fee from Deposit of Overbidder. In the  
24 event that Stalking Horse Bidder is not the prevailing bidder and an Order is entered  
25 authorizing Seller to sell to a party other than Stalking Horse Bidder, the Break-Up  
26 Fee owed to Ja-Ru, Inc. as stalking horse bidder shall be paid from no source other  
27 than: (a) immediately from the prevailing party's deposit, or (b) from the proceeds  
28 of an alternate transaction approved from the Court.



1                   9.     Sale Hearing and Auction. The hearing on the Sale Motion (the  
2 “Sale Hearing”) will commence on December 16, 2019. If competing Qualified  
3 Bids are received by the Bid Deadline, an auction for the Debtor’s Assets (the  
4 “Auction”) will be held two (2) business days prior to the Sale Hearing at the office  
5 of Debtor’s counsel or some other location to be designated in advance by the  
6 Debtor. If the Debtor does not receive any Qualified Bids other than the Stalking  
7 Horse Bid, the Debtor will not conduct the Auction, and will request at the Sale  
8 Hearing that the Stalking Horse Bid be designated as the Winning Bid.

9                   10.   Revisions to Bid Procedures. The Debtor, in consultation with  
10 Stalking Horse Bidder and the Consultation Parties, reserves the right to make  
11 reasonable revisions to the proposed Bidding Procedures as circumstances may  
12 warrant; provided, however, that any material modifications to the Bid Procedures  
13 shall require the consent of the Pre-Petition ABL Agent (as defined in the Interim  
14 DIP Financing Order). The Debtor shall promptly notify parties in interest  
15 (including the Consultation Parties) and prospective bidders of any such  
16 modifications.

17                  11.   Credit Bidding. The Stalking Horse Bidder (as DIP Lender), and  
18 each of the Pre-Petition Secured Parties (as such term is defined in the Interim DIP  
19 Financing Order) have the right to credit bid the full amount of their debt at the  
20 Auction as provided in Section 363(k) of the Bankruptcy Code, subject to the  
21 satisfaction of all liens having priority over the lien that is being credit bid.

22                  12.   Consultation Parties. The Debtor shall consult with the Pre-  
23 Petition Secured Parties and counsel to any Official Committee of Unsecured  
24 Creditors appointed in the case (collectively, the “Consultation Parties”) as set forth  
25 in these Bid Procedures; provided however, that the Debtor shall not be required to  
26 consult with any Consultation Party during the Auction to the extent such  
27 Consultation Party has submitted a bid or has had a bid submitted on its behalf for  
28 so long as such bid remains open, if the Debtor determines in its reasonable business

1 judgment that consulting with such Consultation Party regarding any issue,  
2 selection, or determination would be likely to have a chilling effect on potential  
3 bidding or otherwise be contrary to the goal of maximizing the value of the Debtor's  
4 estate. To the extent the Bid Procedures require the Debtor to consult with any  
5 Consultation Party in connection with making a determination or taking an action,  
6 or in connection with any other matter related to the Bid Procedures or the Auction,  
7 the Debtor shall do so in a timely manner prior to making such determination or  
8 taking such action. The Consultation Parties shall be permitted and authorized to  
9 provide the information available from any Qualified Bidder to their counsel, and  
10 advisors on a confidential basis, and, subject to an appropriate non-disclosure  
11 agreement, the members of the Official Committee of Unsecured Creditors,  
12 provided, however, that the Debtor shall retain the right and power to choose the  
13 winning bidder, subject to the approval of the Bankruptcy Court and, for any Sale  
14 based on a bid other than the Stalking Horse Bid, consent of the Pre-Petition ABL  
15 Agent.

16           13. Due Diligence. The Debtor will provide any potential bidder  
17 such due diligence access or additional information as the Debtor deems  
18 appropriate, which will be substantially the same information for all potential  
19 bidders interested in the same Assets or segment(s) but may include differentiations  
20 between the diligence provided to strategic and financial bidders, as appropriate, and  
21 contractual obligations to limit access to certain proprietary information. The due  
22 diligence period will extend through and including the Bid Deadline. Additional due  
23 diligence will not be provided after the Bid Deadline, unless otherwise deemed  
24 reasonably appropriate by the Debtor, in consultation with the Consultation Parties.

25           14. Back-Up Bids. The Qualified Bidder(s) with the next highest or  
26 otherwise best Qualified Bid or collection of Qualified Bids, as determined by the  
27 Debtor, in consultation with the Consultation Parties, at the time of the Auction, will  
28 be required to serve as a back-up bidder (each, a "Back-Up Bidder") and keep its bid

1 open and irrevocable until the earlier to occur of (i) thirty (30) days after the Sale  
2 Hearing and (ii) closing on the Winning Bid with the Winning Bidder. If the  
3 Winning Bidder fails to consummate the Sale, the Debtor will be authorized and  
4 directed to consummate the Sale with the Back-Up Bidder without further order of  
5 the Bankruptcy Court; provided, however, that any Sale to a Back-Up Bidder  
6 (except to the extent the Stalking Horse Bidder is selected as Back-Up Bidder with  
7 the Stalking Horse Bid as its Qualified Bid) shall be subject to the consent of the  
8 Pre-Petition ABL Agent.

9           15.    Return of Deposits. All Good Faith Deposits shall be returned to  
10 each bidder not selected by the Debtor as the Winning Bidder or the Back-Up  
11 Bidder no later than five (5) business days following the entry of the Sale Order.

12           16.    Assumption and Assignment Objections. The Debtor must file a  
13 list of all executory contracts that may potentially be assumed, together with  
14 proposed cure amounts, as a supplement to the sale motion filed concurrently  
15 herewith by no later than fourteen (14) days following the filing of said sale motion,  
16 which shall be served on all said parties. Any counterparty to a contract identified  
17 by the Debtor in that supplement must submit any objection to the proposed cure  
18 amount, the proposed adequate assurance to be provided, or another aspect of the  
19 assumption and assignment in writing to the Court, the Debtor, and the Stalking  
20 Horse Bidder by no later than seven (7) days prior to the Sale Hearing. All such  
21 objections that have not yet been resolved prior to the Sale Hearing will be resolved  
22 at the Sale Hearing. Any counterparty that does not submit an objection timely will  
23 be deemed to consent to the assignment and assumption of its contract to the  
24 Winning Bidder and to the proposed cure amount in said supplement.

### 25 **III. ARGUMENT**

#### 26 **A. The Bid Procedures Are Adequate and Reasonable Under the** 27 **Circumstances.**

28 The proposed Bid Procedures serve the best interests of the bankruptcy estate.

1 The Bankruptcy Code provides that a debtor-in-possession, “after notice and a  
2 hearing, may use, sell, or lease, other than in the ordinary course of business,  
3 property of the estate.” 11 U.S.C. § 363(b)(1). Although Section 363 does not  
4 specify a standard for approving bid procedures, the Ninth Circuit Bankruptcy  
5 Appellate Panel has established a standard based on the Debtor’s “sound business  
6 judgment.” Under this standard, the “bankruptcy court has considerable discretion  
7 in deciding whether to approve or disapprove the use of estate property by a debtor  
8 in possession, in the light of sound business justification.” *In re Walter*, 83 B.R. 14,  
9 16 (9th Cir. 1988); *see also In re Continental Airlines, Inc.*, 780 F.2d 1223, 1226  
10 (5th Cir. 1986); *In re Abbotts Dairies of Pennsylvania, Inc.*, 788 F.2d 143 (3rd Cir.  
11 1986); *In re Lionel Corp.*, 722 F.2d 1063, 1071 (2nd Cir. 1983); *In re Psychometric*  
12 *Systems, Inc.*, 267 B.R. 670, 674 (Bankr. D. Colo. 2007) (collecting cases).

13 In determining whether the debtor-in-possession has complied with the sound  
14 business judgment rule, the Court must consider whether: (a) there has been “[a]ny  
15 improper or bad motive,” (b) the “price is fair and the negotiations or bidding has  
16 occurred at arm’s length” and (c) the sale followed “[a]dequate procedures,  
17 including proper exposure to the market and accurate and reasonable notice to all  
18 parties in interest.” *In re Castre*, 312 B.R. 426, 428 (Bankr. D. Colo. 2004). When  
19 applying the rule, “the bankruptcy court should presume that the debtor-in-  
20 possession acted prudently, on an informed basis, in good faith, and in the honest  
21 belief that the action taken was in the best interests of the bankruptcy estate.” *In re*  
22 *Pomona Valley Med. Group, Inc.*, 476 F.3d 665, 670 (9th Cir. 2007) (considering  
23 the rule in the context of the debtor’s decision to reject a contract). In the context of  
24 this rule, courts often approve overbid procedures, *see, e.g., In re Crown Corp.*,  
25 679 F.2d 774, 777 (9th Cir. 1982).

26 Of course, this Court enjoys broad powers to approve such measures. “The  
27 Court may issue any order, process or judgment that is necessary or appropriate to  
28 carry out the provisions of [the Bankruptcy Code].” 11 U.S.C. § 105(a); *In re*

1 *Chinichian*, 784 F.2d 1440, 1443 (9th Cir. 1986); accord *In re Geothermal*  
2 *Resources Int'l*, 93 F.3d 648, 651 (9th Cir. 1996); *In re Lionel Corp.*, 722 F.2d  
3 1063, 1069 (2nd Cir. 1983) (noting a bankruptcy judge's "broad administrative  
4 power" and "substantial freedom to tailor his orders" to a case at hand).

5 Here, the Bidding Procedures comport with the Debtor's sound business  
6 judgment. The Debtor believes that its ability to select the highest and best bidder at  
7 a Court-supervised auction enhances and benefits the marketing process by  
8 providing a motivation for bidders to submit a qualified bid with a high market  
9 value. The Bid Procedures permit Qualified Bidders to submit topping bids, as well  
10 as to propose alternative terms of sale. In this way, the Bidding Procedures embody  
11 an arm's-length process and ensure competitive bidding over the price and terms of  
12 sale. By making the price and terms of sale competitive, the Bidding Procedures  
13 provide proper exposure of the Assets to the market. This, in turn, will maximize  
14 the sale price of the Assets for the benefit of all creditors and the bankruptcy estate.  
15 In addition, the Bidding Procedures require Prospective Bidders to deposit a sum  
16 into escrow and to reveal their financial information, thus ensuring only earnest and  
17 fiscally capable buyers bid. Also, the Bidding Procedures provide reasonable notice  
18 of the sale to all parties in interest, including parties who might potentially be  
19 interested in bidding at the Auction. Further, the requirement of having an initial  
20 overbid higher than the stalking horse bid is consistent with the bid procedures  
21 commonly approved by bankruptcy courts which usually provide that a competing  
22 bid exceed the initial offer by a specified minimum amount. The initial overbid here  
23 is calculated to include the amount of the purchase price and an additional amount  
24 sufficient to protect the estate from the Break-Up Fee of the Stalking Horse Bidder  
25 and costs associated with the transaction. Lastly, the overbid increment of \$750,000  
26 complies with the Court's Guidelines for Early Disposition of Assets, Pre-Packaged  
27 Plans and the Sale of Substantially All Assets under § 363 ("Guidelines") that  
28

1 provides that each overbid must be at least 5% more than the amount of the original  
2 offer.

3       **B. The Break-Up Fee is Reasonable, Appropriate and Beneficial to the**  
4       **Estate.**

5       Sellers of assets often employ bidding protections, such as the payment of a  
6 break-up fee, in order to encourage the making of bids. “A ‘break-up fee’ is a fee  
7 paid to a potential acquirer of a business, or certain assets, by the seller, in the event  
8 that the transaction contemplated fails to be consummated and certain criteria in the  
9 purchase agreement are met.” *In re Integrated Resources, Inc.*, 135 B.R. 746, 750  
10 (Bankr. S.D.N.Y. 1992); *In re APP Plus, Inc.*, 223 B.R. 870, 874 (Bankr. E.D.N.Y.  
11 1998); *In re America West Airlines, Inc.*, 166 B.R. 908, 910 (Bankr. D. Ariz. 1994).  
12 A break-up fee is intended to compensate the potential acquirer for the fees and  
13 expenses incurred in connection with its efforts to complete the transaction. *See In*  
14 *re Diamond Plus, Inc.*, 233 B.R. 829, 831 (Bankr. E.D. Ark. 1999); *In re APP Plus,*  
15 *Inc.*, 223 B.R. at 874 (“Typically, the break-up fee covers reimbursement of the  
16 disappointed purchaser’s out-of-pocket expenses related to the proposed acquisition  
17 and/or compensation for the time, efforts, resources, lost opportunity costs and risks  
18 incurred by the disappointed purchaser.”); *see also, In re O’Brien Envtl. Energy,*  
19 *Inc.*, 181 F.3d 527, 535 (3d Cir. 1999) (break-up fees compensate potential acquirer  
20 for the “time and expense it has spent in putting together its offer if the transaction is  
21 not completed” and encourages it “to do the due diligence that is prerequisite to any  
22 bid”).

23       While the Ninth Circuit has not addressed this issue, courts in this and other  
24 circuits have developed three main standards for evaluating the propriety of break-  
25 up fees in the context of the sale of estate assets. *See O’Brien*, 181 F.3d at 533-35.  
26 Some courts have employed a variation on the business judgment rule. *In re Fifth*  
27 *Ave. Associates, L.P.*, 96 B.R. 24 (Bankr. S.D.N.Y. 1989); *see also, Integrated*  
28



1 *Resources*, 135 B.R. at 753.<sup>1</sup> The best-interests-of-the-estate standard adopted by  
2 other courts tests “whether the interests of all concerned parties are best served by  
3 such a fee.” *America West Airlines*, 166 B.R. at 912. Finally, declining to apply  
4 either standard, the Third Circuit found instead that *ex post* considerations of break-  
5 up fees must be made under the general administrative expense jurisprudence of  
6 Section 503(b). *O’Brien*, 181 F.3d at 535.

7 The Debtor submits that, using any of the above standards, the Break-Up Fee  
8 is reasonable and proper under the facts and circumstances of this case and should  
9 be approved. Among other things, the Stalking Horse Bidder, as stalking horse  
10 bidder, has expended significant time and resources and incurred legal fees, and will  
11 continue to do so, in completing due diligence, negotiating the APA, ensuring it can  
12 satisfy all bidding requirements, closing conditions and representation and  
13 warranties, and participating at the auction. Further, in negotiating the terms of the  
14 Break-Up Fee, the Debtor has exercised its business judgment and reasonably  
15 concluded that such Break-Up Fee is necessary to complete the contemplated  
16 transaction. The Debtor and Stalking Horse Bidder’s negotiations have been  
17 conducted at arm’s length and are devoid of any bad faith or unfair dealing. The  
18 Break-Up Fee is not the result of any improper leverage exerted by Stalking Horse  
19 Bidder.

20 In addition, the Debtor does not believe that the amount of the Break-Up Fee  
21 is so substantial as to chill other potential bidders from submitting competing bids.  
22 Rather, the amount of the Break-Up Fee is reasonable compared to the Purchase  
23 Price and will only be paid if the assets are sold to a bidder other than the Stalking  
24 Horse Bidder that must provide greater value for the Purchased Assets.

---

26  
27 <sup>1</sup> Courts adopting this standard consider whether the break-up fee: (i) was tainted by  
28 self-dealing; (ii) chilled rather than encouraged bidding; and (iii) was reasonable  
relative to the purchase price. *See Integrated Resources*, 147 B.R. at 657.

1 Further, the Break-Up Fee is likely to encourage competitive bidding, in that  
2 the Debtor believes the Stalking Horse Bidder likely would not negotiate and  
3 execute an APA without a Break-Up Fee. The Break-Up Fee thus likely will  
4 “induc[e] a bid that otherwise would not have been made and without which bidding  
5 would [be] limited.” *Id.* at 537. Similarly, the Stalking Horse Bidder’s offer would  
6 provide a minimum bid on which other bidders can rely, thereby “increasing the  
7 likelihood that the price at which the [assets will be] sold will reflect [their] true  
8 worth.” *Id.*

9 **C. The Break-Up Fee Should be Approved as a Use of the Estate’s**  
10 **Assets Outside the Ordinary Course of Business.**

11 Under Bankruptcy Code section 363(b), the Debtor is permitted to use  
12 property of the estate outside the ordinary course of business after notice and a  
13 hearing. Here, the Debtor and the Stalking Horse Bidder have agreed on the Break-  
14 Up Fee in furtherance of the Debtor’s proposed sale of the Assets. The Debtor has  
15 exercised its business judgment, and reasonably concluded that the Break-Up Fee is  
16 necessary to complete the contemplated transaction and is in the best interests of the  
17 Debtor and its bankruptcy estate. To the extent necessary, the Debtor requests that  
18 the Court approve the Break-Up Fee pursuant to Section 363 as a use of the  
19 Debtor’s property outside the ordinary course of business. As set forth in this  
20 Motion, the requested relief is in the best interest of the Debtor and its bankruptcy  
21 estate and is justified and appropriate under the circumstances.

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1 **IV. CONCLUSION**

2 For the foregoing reasons, the Debtor requests that this Court enter an order  
3 establishing the Bidding Procedures for the sale of the Assets, allow the Break-Up  
4 Fee, approving the related relief described above, and grant such other and further  
5 relief as the Court deems appropriate.

6 Dated: November 18, 2019

7 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

8 By /s/ Ori Katz  
9 ORI KATZ

10 Proposed Counsel for Debtor  
11 Imperial Toy LLC  
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